

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, December 7, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Dick Esseks, Roger Larson, Melinda Pearson, Mary Strand, Lynn Sunderman and Tommy Taylor (Gerry Krieser absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Greg Czaplewski, David Cary, Joe Rexwinkle, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held November 23, 2005. Motion for approval made by Strand, seconded by Carroll and carried 8-0: Carlson, Carroll, Esseks, Larson, Pearson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

December 7, 2005

Members present: Carlson, Carroll, Esseks, Larson, Pearson, Strand, Sunderman and Taylor; Krieser absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 05056, SPECIAL PERMIT NO. 05057 and COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 05015.**

Ex Parte Communications: None.

Item No. 1.1, Special Permit No. 05056, was removed from the Consent Agenda and scheduled for separate public hearing.

Taylor moved to approve the remaining Consent Agenda, seconded by Strand and carried 8-0: Carlson, Carroll, Esseks, Larson, Pearson, Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

Note: This is final action on Special Permit No. 05057 and County Comprehensive Plan Conformance No. 05015, unless appealed to the City Council or County Board within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 05056
TO OPERATE A CONCRETE CRUSHER
ON A TEMPORARY BASIS TO
RECYCLE CONCRETE AND ASPHALT,
ON PROPERTY LOCATED AT
3900 INDUSTRIAL AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 7, 2005

Members present: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson; Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to a letter in opposition from J.R. Brown.

Additional information submitted for the record: Joe Rexwinkle of Planning staff submitted a letter in opposition from J.R. Brown.

Rexwinkle also explained that the difference between this application and the previous application that was denied is that this is for a “temporary” operation.

Esseks inquired about risk to the products produced by General Dynamics, which was an issue during the debate on the previous special permit. Rexwinkle believes that General Dynamics had a defense contract to produce components used on machinery used in Iraq and there was a concern at that time that dust created by crushing the concrete would somehow get into the manufacturing process and weaken some of the materials that they use. Esseks inquired whether there was any study of that risk as to how serious of a risk that it is? Rexwinkle did not know, but the previous application was denied.

Esseks believes there would still be a risk, even with a temporary permit. Rexwinkle agreed that it is certainly possible; however, there are three neighboring property owners that were previously opposed that have indicated their approval of this application as long as it only occurs during the winter months. General Dynamics has not commented on this application.

Proponents

1. **Bob Lewis** appeared on behalf of **Sanford & Son**, the applicant for this temporary permit. Subsequent to the application denied in May, the applicant went back to the three property owners and their attorney and had conversations about what they could do and when they could operate this to get rid of the concrete on the site. Lewis received a letter from the attorney for the three property owners, including General Dynamics, indicating that there are no operations during the months of this temporary permit, i.e. that the painting operation would not be going on at this time and they were in agreement to allow the applicant to do the crushing during this temporary timeframe of December 1, 2005 until March 1, 2006.

Lewis requested that Condition #1.2 be amended to read: "Special Permit #212 is hereby rescinded, or is reduced to eliminate the area occupied by the concrete crusher." Special Permit #212 has been on the property since 1961 for an auto salvage and auto wreckage use. The applicant only wants to rescind that special permit on the property being used by the concrete crusher.

As far as the fence, the special permit requires that everything has to be 200' from the existing fences and property lines.

Carroll sought confirmed that the applicant will be removing the concrete from the property once crushed. Lewis stated that they would.

Larson inquired as to the purpose for getting rid of the concrete. Lewis stated that the intent is to develop the property. They had some issues with DEQ and they are still working to resolve some of those issues. The desire is to get rid of the concrete and move forward to clean up and ultimately develop the property.

Larson inquired whether there is anything that can be done to mitigate the dust problem. Lewis advised that the applicant is required to meet all of the Health Department requirements for dust control. These requirements have been included in the bid specifications. The operator will be required to meet all those requirements before being allowed on the site.

Lewis advised that General Dynamics is north of the site, approximately 1,000 feet from property line to property line.

Strand noted that the previous application was during the summer when the wind was blowing from the south, and now we are in a season where the wind is blowing from the north. Lewis stated that the other property owners have agreed that this time of year works for them.

Esseks inquired as to why General Dynamics is not producing anything for the US Government during that time. Lewis explained that the problem they had was the painting

process, and they indicate that they are not going to be doing that painting process during the months that this crusher would be operated. He has a letter from their attorney that was submitted as part of this application.

Opposition

1. Carol Brown, 2201 Elba Circle, testified in opposition and read the letter from her son, J.R. Brown, who is currently serving in the United States Army in Iraq, into the record. They rely on Up-Armored vehicles to protect them from small arms fire and improvised explosive devices. General Dynamics provides armor for the cab on those trucks. The concern is that a weld could be contaminated and thus degrade the integrity of the weld which may not be detected. Brown urged that the risk is too great to approve this special permit. If this applicant wants to get rid of the concrete, they can load it up and move it. There are other places where they can crush it. She is also concerned about the dust and impact on the bike path. How will the dust be monitored? This permit must be denied.

Brown also informed the Commission that the fences have not been repaired. There is traffic up and down the bike path—trucks are driving on the bike path—why? Then the taxpayers have to pay to have it repaired.

2. Mike Rierden appeared on behalf of Dick Stephenson, **Stephenson's Truck Repair**, and **David Bratcher**, who owns the property directly to the north of the rock crusher operation. Stephenson is across the street north about the same distance as General Dynamics. Rierden acknowledged that he is the attorney to which Bob Lewis referred. He represented Stephenson and Bratcher at the original hearing opposing the permanent special permit. However, Rierden advised that he did not then nor does he now represent General Dynamics, although he has had conversations with them.

Rierden suggested that language should be added to Condition #1: "This approval permits a rock crusher to recycle concrete and asphalt from December 1, 2005 to March 1, 2006, at which time the permit automatically expires." His clients are willing to not object to this temporary permit because of the time frame in which it is taking place; however, they do not want there to be any extensions allowed. We want it perfectly clear that this is the only time they have to get the rock out of there. Rierden also suggested that the Health Department conditions should be set forth in the special permit. It is his clients' desire that the property owner be given the ability to clean up the property and market it in the future or whatever they have in mind. This must be a temporary situation.

Esseks inquired whether Rierden would have any suggestions for dealing with the potential dust issue. Rierden did not know how that could be addressed; however, if the applicant cleans the property up sufficiently, it should not happen.

Staff questions

Pearson suggested that the language in Condition #3.3 be amended to delete the following, "...provided, however, said 30-day period may be extended up to six months by administrative amendment. ...". Rexwinkle agreed that the language could be deleted. Pearson does not believe that the time to file the letter of acceptance should be extended six months if the whole point is to get it done this winter.

Larson asked whether there is any evidence that General Dynamics is not carrying on this painting process. Rexwinkle indicated that he has had no communication from them. He has heard that they are not doing this painting process during this time, but he does not have that information from them. Larson believes this is important information. Rexwinkle assured that General Dynamics was notified of this request. The only letter the staff received is from Mike Rierden on behalf of the other two property owners, and Rierden does not represent General Dynamics.

Esseks asked whether DEQ or the City will impose standards regarding cleanup afterwards. Rexwinkle suggested that the cleanup could be made a condition of approval along with the termination date.

Carroll asked staff to address reducing the size of the special permit. Rexwinkle stated that the staff is not opposed to that request. It will help create less confusion if we don't have overlapping special permits. Ray Hill of Planning staff clarified that it has been a standard policy to not have overlapping special permits, and when this applicant came in, it was staff's position that the permits should not overlap, thus the requirement to rescind Special Permit #212. It is a standard policy that any existing special permit be rescinded at the time the new special permit is issued. Since this is a temporary type special permit, it would go away on March 1, 2006, so it may not be as important to rescind #212 as it would have been had this been a permanent special permit. Rexwinkle believes it is clear that the applicant does not want to lose #212 entirely.

Response by the Applicant

Lewis addressed the issue with General Dynamics. One of the reasons that there was protest from the adjacent neighbors previously is because they had contracts with General Dynamics to do the welding and painting. Based on his conversation with Mike Rierden and the letter he received from Mike Rierden, that specific production is not taking place at this time. General Dynamics has been notified and they have not objected to this temporary special permit. That painting and welding is not taking place at the time we are asking for this special permit to be in place.

As far as the checks and balances, Lewis believes that is why they are here. They are required to meet all the requirements of the Health Department, which includes no visible dust from the property. By this special permit, the applicant is asking for the opportunity to show that they can do that.

In regard to trucks on the bike path, Lewis stated that those trucks are not from this site. Those are actually from a city project and not relevant to this application.

With regard to cleanup, Lewis stated that they have been working with DEQ for the last five years on this site cleanup from the previous user. There is an ongoing cleanup process taking place. Once this concrete is out of there, part of the cleanup will be to remove any materials left over from the recycling of autos and remove any contaminated materials. The goal is to cap the site so that it can be used as a developable area. Lewis indicated that he has lots of documentation from the DEQ.

As far as the dust issue, Lewis pointed out that the applicant must meet the Health Department requirement, which is no visible dust. This special permit is the opportunity to make that happen.

With regard to rescinding Special Permit #212, Lewis advised that in the letter of application, he said that he would agree to rescind it or reduce the size. There was a site plan submitted and the crushing operation is on the east half of this property, not including the existing building. It is acceptable to the applicant to remove that special permit from the east half of the property and have it apply to the west half of the property that includes the building because this is a temporary situation. They do not want to give up the permit that is in place today.

Pearson confirmed that all of the existing materials will be able to be removed without an extension of time. Lewis believes that is possible. That is absolutely their goal. They do not intend to come back and do this next winter. The goal is to develop the property. They want to handle the issues with DEQ and get the site cleaned up.

Carroll wondered whether the applicant would agree to stipulate that everything will be removed at the end of this permit, whether it is crushed or not. Lewis agreed.

Esseks still believe that a really critical document is a written statement from General Dynamics that the contract which is so vulnerable to dust will not be carried out at all during that three-month period. He needs that statement and documentation from DEQ before he can approve this special permit.

Lewis explained that the DEQ clean-up plan has been kind of a moving target because of the different types of contamination and testing they have done. He does have documentation

from them as to what they are asking for. As far as documentation from General Dynamics, Lewis stated that he was under the impression that Rierden did represent General Dynamics. He misunderstood. The operation General Dynamics was performing was on the site of the clients represented by Rierden. They were subcontractors of General Dynamics and that is why they were opposed last time. Lewis met with them and it was his understanding that these dates work because they are not doing those operations during these dates.

Taylor inquired whether there are any measures that can be taken to police that area to see if they are really doing what they say they are going to do and a way of measuring the degree and type of dust material. Rexwinkle suggested that if they are violating some of the conditions, there would obviously be some complaints from the nearby property owners. It would be enforced on a complaint basis. Rexwinkle assumes that the Health Department would inspect the dust emissions on a complaint basis.

Lewis offered that he would not be opposed to adding a condition that the operator of the crusher does have to notify Health when they move in and the days that they are operating the crusher.

ACTION BY PLANNING COMMISSION:

December 7, 2005

Strand moved approval, with the conditions as set forth in the staff report with the following amendments:

1. Add language, "...at which time the permit automatically expires and all materials removed by that date."

- #1.2. Add, "...Special Permit #212 is hereby rescinded from property affected by rock crushing. Site to be determined and to the satisfaction of the Planning Department."

- #3.3. Strike language, "provided, however, 30 day period extended".

Add condition that DEQ or other appropriate city-county agency must inspect site to insure proper cleanup has taken place on or before expiration of special permit and before issuance of any building permits for further development.

Add condition to require a letter of approval from General Dynamics stating that their operations will not be compromised and that they are in agreement prior to the issuance of any special permit.

Add condition that the crushing operator notify Health Department on the days the crusher is in operation.

Motion was seconded by Pearson.

Strand is hopeful that these amendments will address the concerns of health and safety before the permit is issued so that they can get the site cleaned up.

Taylor commented that he is very sensitive to the mother of J.R. Brown and our men that are overseas, but he believes that the way this is crafted, it will not compromise that situation. We want to do everything we can to upkeep our business community as well, without compromising the lives of our loved ones who are already in harm's way.

Carlson believes it is clear that the will of this body is that this permit not be issued if there is any jeopardy to the General Dynamics operation.

Motion for conditional approval, with amendments, carried 8-0: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson voting 'yes'; Krieser absent. This is final action, unless appealed to the City Council within 14 days.

STREET VACATION NO. 05011,
TO VACATE THE EAST 7' OF NORTH 23RD STREET
FROM THE SOUTH LINE OF VINE STREET
TO THE NORTH LINE OF U STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 7, 2005

Members present: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson; Krieser absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted an e-mail communication in support from the Urban Development Department.

Proponents

1. Fernando Pages, owner of **Brighton Construction Company,** who is currently developing Liberty Village, presented the proposed street vacation request. Twelve of the sixteen houses are being constructed in Liberty Village and about 13 out of the 16 are sold. This was brought forward as a two-phase project, with 16 single family homes in phase one and phase two being two lots on the west end of the subdivision, which are going to be for the construction of two townhouse buildings or four individual townhouse units. This proposed street vacation is to facilitate the completion of phase two of the project to get the size of the lots needed. These would be two townhouses, designed in the same look and style as the

single family homes that are in Liberty Village. In order to avoid the townhouse look, they have pointed the front of each house to each street, so as you are going down the street you do not see two identical townhouses next to each other. None of the elevations are identical. There are four unique plans in the Liberty Village development. These townhomes will look like single family homes and integrate well within the community. There is a requirement from the state to provide a certain number of accessible units, and they are building "visitable" units and have agreed to do 10% of the project with these visitable units and these units in phase two will be as such. There will be a ramp integrated with the sidewalk so that you see a front porch with steps, but around the side there is a turn which follows a ramp onto the porch and into the house.

Pearson inquired when the sidewalks on the west side of 24th Street would be built. Pages stated that the sidewalks would go in as the houses are completed. He will be letting that contract along with the alley construction. As soon as there is good enough weather to do the alleyway, the sidewalks will also be constructed.

Carroll inquired about the two large trees that the Parks Department is recommending be saved. Pages indicated that he did not know which trees they are referring to, but he will definitely keep them if he can. Czaplewski advised that the two trees are between the curb and sidewalk at the present time, so he does not believe it would be a problem to retain them. After the right-of-way is vacated, the CUP will need to be amended and as part of that approval, the Planning Department would have them identify that those trees will remain. Pages had no objection.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

December 7, 2005

Taylor moved a finding of conformance with the Comprehensive Plan, seconded by Larson and carried 8-0: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 3413,
FROM R-4 RESIDENTIAL DISTRICT TO
R-2 RESIDENTIAL DISTRICT, ON PROPERTY
GENERALLY LOCATED AT NORTH 24TH STREET
AND SUPERIOR STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 7, 2005

Members present: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson; Krieser absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. Carol Brown, 2201 Elba Circle, appeared on behalf of Landon's Neighborhood Association, the applicant, and requested an additional six-month delay. The neighborhood has not heard back from the builder in this area. There has been development occurring in this area, including a new day care which was on the initial plan that was proposed for this area, and which was said couldn't happen. But they have constructed a wonderful day care near the elementary school. There is a lot of traffic on this street.

The past history on this property was that it was going to be a condominium, apartment-type complex. That is why the neighborhood association requested the downzone—in order to go back to more of a plan that would be the townhomes that are presently there or assisted living. The builder has not gotten back to the neighborhood as to what he proposes to do with this area. The neighborhood is interested in keeping the communication lines open. The last time the neighborhood heard from the developer was 8-12 months ago, when he talked about a small business park, and Landon's was going to support the zoning for small businesses. Brown reiterated her request for another six-month delay to meet with the builder. The neighborhood does not want to see any high density housing in this area and that is why they want to keep this downzone request on pending.

Carroll inquired as to whether Brown thinks another six months will allow them to get a response from the developer. Brown stated that she is "hopeful".

Carroll then suggested that the neighborhood could withdraw the change of zone request until they have discussions with the property owner. Brown's response was that the neighborhood cannot afford to pay another filing fee. That is why they do not want to withdraw at this time.

Carroll posed the question as to whether Brown thinks it is fair to keep a cloud hovering over this landowner. Shouldn't we set a date to vote on it? How long do you hold that cloud over him? Carol reiterated that the neighborhood is very, very scared that there will be an apartment complex attempting to weasel its way in. The neighborhood supported the condominiums to the west of Baymont Inn, which do not have direct access into the Landon's neighborhood. That was one of the restrictions requested by the neighborhood. There are a lot of traffic problems and a lot of children walking in the neighborhood. The residents believe this downzone request is the way to watch out for what happens to the area. They do not want an apartment complex.

Tom Cajka of Planning staff clarified that multi-family is not a permitted use in the R-4 zoning district. The only way it would be permitted would be through a special permit for a community unit plan. Thus, it would have to come back through the public hearing process before the Planning Commission. The property in question is currently one large lot. If they wanted to do any type of residential, even if single family, there would need to be a preliminary plat or community unit plan that would have to be first approved by the Planning Commission.

Esseks inquired as to the most density that could go in under R-4 zoning. Cajka referred to the table on page 56 of the agenda. Detached single family would be allowed at 5,000 sq. ft. per unit, and two-family would be 2,500 sq. ft. per unit. The density for a community unit plan would be 13.9 units per acre in R-4 zoning. Anything above two units would need the community unit plan special permit. The duplex of 2,500 sq. ft. would be based on the lot area.

Carlson pointed out that there is already an existing approved special permit on this property. Cajka advised that the property has an approved Special Permit No. 1821 for child care and Special Permit No. 1820 for elderly housing, domiciliary care. The amendment to Special Permit No. 1781, the Northview 1st Community Unit Plan, allows the elderly housing. After that, Special Permit No. 2014, which proposed to get rid of the elderly housing and put in multi-family in five different buildings, was denied by the City Council. Thus, it is not raw R-4 ground.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

December 7, 2005

Taylor moved to place on pending for six months, seconded by Pearson.

Strand stated that she will vote against the motion. This request has been on the Planning Commission agenda for 2.5 years. It is not the property owner making the request. She agrees with the staff recommendation.

Carroll agreed with Strand. If the landowner is going to come forward to do something different, the neighborhood association will have a great opportunity at that time to come forward. He does not think the landowner is going to respond to the neighborhood association. This pushes it forward and if the owner decides to do something, the neighborhood association can come forward at that time.

Pearson disagreed. She has no specific knowledge that the developer will not listen to the neighborhood association. And when we have a neighborhood association working in regard to the wishes of the neighborhood, and one landowner who does not respond, she does not know what it would hurt to put it on pending for six more months.

Esseks noted that the property owner has R-4 zoning and two approved special permits. It bothers him that outsiders can come in and request the change in zoning. He believes it is a bad precedent to let this prolong.

Taylor observed that it is a lot of volunteer work for people who preside over the neighborhood associations, and he does not want to put them in that type of financial squeeze. These people really care and are committed to their neighborhood. He does not think a decision to send this thing forward would be as responsible as allowing this association to confront that builder and at least have some sort of measure of control as to what happens in their neighborhood.

Strand recalled that the developer has come down several times and expressed frustration with the process, and she believes that several of the Commissioners believe that when it is not the property owner requesting the change, at some point you have to call a stop to it. The neighborhood always has the opportunity to come and speak in support or opposition to anything that is going on in their neighborhood.

Carlson disagrees that there is a cloud hanging over the property. The owner has an approved special permit, change of zone and community unit plan regardless of what is on the pending list. He could start pushing dirt tomorrow.

Motion to defer for six months failed 3-5: Taylor, Pearson and Carlson voting 'yes'; Carroll, Esseks, Larson, Sunderman and Strand voting 'no'; Krieser absent.

Strand moved to deny, seconded by Carroll.

Pearson moved to amend to instruct the Planning Department to refund the application fee to the applicant, seconded by Taylor.

Rick Peo of the City Law Department advised that this vote does allow the change of zone process to proceed. There is no basis or justification for any refund. You don't get a refund whether you win or lose.

Motion to amend to refund the application fee failed 2-6: Taylor and Pearson voting 'yes'; Carroll, Esseks, Larson, Sunderman, Strand and Carlson voting 'no'; Krieser absent.

Motion to deny carried 5-3: Carroll, Esseks, Larson, Sunderman and Strand voting 'yes'; Taylor, Pearson and Carlson voting 'no'; Krieser absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05052,
UNIVERSAL ADDITION PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 14TH STREET AND PIONEERS BOULEVARD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 7, 2005

Members present: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson; Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested an indefinite deferral or at least until February 15, 2006.

Proponents

1. **Peter Katt** appeared on behalf of the applicant. This application has been deferred for a number of times because of what is ongoing in terms of the Beal Slough revisions and mapping efforts. That has now been resolved with regard to this property, but as a result of the floodplain issues and Beal Slough, the applicant will be submitting a revised site plan for review prior to public hearing. At this point, it is difficult to predict the exact time line. His best guess is that it will be February 15th before they are ready for public hearing.

Strand believes that the Commission has been instructed not to place anything on indefinite pending, but rather a date certain.

Rick Peo of City Law Department approached the Commission and stated that he has always suggested that if it is the applicant requesting to be placed on pending indefinitely, it is acceptable because it is their application.

Upon further discussion, Esseks moved to defer, with continued hearing and action scheduled for February 15, 2006, seconded by Taylor. Esseks wants there to be a clear distinction from the motion just made on the previous Change of Zone No. 3413, in that this is an attorney representing a landowner, where the applicant on Change of Zone No. 3413 was not the owner. He is willing to defer for this applicant because it is his property, but he does favor a definite time so that the issue can be resolved.

Pearson commented that this Commission sits in judgment all the time as outsiders. We don't own the property but we get to have input. A neighborhood association doesn't get input? Unless you are on the Planning Commission or City Council, or owner of the property, you

don't get a say? Esseks suggested the issue is whether they have an indefinite continuance or date certain. Pearson suggested that the only difference is that this is an attorney who represents an owner of the property. She disagrees that this has more merit than the last request for deferral. Esseks pointed out that the other case already has the zoning and a special permit. That has to be respected.

Peo then pointed out that indefinite pending requires readvertising and an additional fee to the applicant.

Motion to defer to February 15, 2006, carried 7-1: Carroll, Esseks, Larson, Sunderman, Strand, Taylor and Carlson voting 'yes'; Pearson voting 'no'; Krieser absent.

There was no other public testimony.

CHANGE OF ZONE NO. 04066;
MISCELLANEOUS NO. 04015; AND
MISCELLANEOUS NO. 05007,
TEXT AMENDMENTS TO TITLE 26, TITLE 27
AND THE CITY OF LINCOLN DESIGN STANDARDS,
REGARDING STREETScape AND PEDESTRIAN
STANDARDS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 7, 2005

Members present: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson; Krieser absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

The Clerk announced that the staff would request a two-week deferral for re-advertising a piece of the legislation in Change of Zone No. 04066; however, that the hearing be held today.

Additional information submitted for the record: Tom Cajka of Planning staff submitted an e-mail in support from the Near South Neighborhood Association.

Proponents

1. Marvin Krout, Director of Planning, presented the proposal, stating that this is one of the many efforts to "fix the standards and streamline the process".

The primary authors of the proposed legislation are David Cary on pedestrian standards and Tom Cajka on the streetscape and landscape and screening standards.

This has a very long history, going back to before the year 2000 where there was discussion about “public way corridors” (how we are going to design and build the new arterial streets in the new development areas). It also dealt with the attractiveness of the street and the adjacent frontage. That case turned into proposed ordinance amendments and in 2001 or 2002, the Planning Commission put that proposal on pending indefinitely.

The second effort was called “entryway corridors” which had its own history, the objective being to look at the major ways into the community, particularly I-80. There was a proposed I-80 corridor ordinance to maintain the attractiveness of the community, and that, too, was placed on pending by the Planning Commission 2002.

In the meantime, the new Comprehensive Plan was adopted, there have been changes on the Planning Commission and the Director of Planning. The newly adopted Comprehensive Plan makes all kinds of references to improving the attractiveness of the community and how that is related to economic development in the 21st century.

The foregoing amendments have now been consolidated into streetscape, landscape and pedestrian standards. The staff has been working on this proposal for 15 months and there have been two or three briefings for the Planning Commission. The staff sought input from the development community and significant changes have been made in response to that input. This package came before the Commission in April, when it was again placed on pending and it has now been repackaged and is hereby resubmitted for the Planning Commission review and consideration.

Krout then summarized the proposal:

- allow street trees in right-of-way of major streets -- they make a tremendous difference in the visual quality of the community – where they will shade and protect pedestrians and the street;
- increase the density of low screening that is currently required in front of parking lots;
- soften the appearance of the solid wood fences;
- screen trash receptacles, open storage and loading areas;

--alter the formulas for tree planting requirements--the effect is to increase trees in and around parking lots in older business districts where there is development or a new development. The impact on the new business districts is none. The problem in the newer areas appears to be enforcement, thus the proposal is to show a contract for the landscaping or provide a bond;

--in the older business districts, new development or redevelopment is allowed to pave parking lots up to the street right-of-way, which is usually up to the sidewalk, so the proposal requires at least a 6' landscape strip in front of that parking lot with low shrubs;

--Parks Department has been working on standards and materials when property owners want to do landscaping on nearby public right-of-way -- they have asked us to include those new standards as part of the design standards in this package;

--buildings and parking would be allowed to be closer to the street. If we are serious about pedestrian convenience, which is another part of this package, we want to encourage activities to be closer to the street and the sidewalk. It gives back 30' of property that is now front lawn along these streets to the property owner, which is a considerable increase in value to the property.

--the idea of streamlining the process has to do with a strategy that the Planning Department is pursuing, i.e. eliminating use permits. If there are sufficient standards, and if we have dealt adequately with screening, landscaping, and lighting, we should be able to avoid having all site plans for commercial development in newer zoning districts come before the Planning Commission for approval. This does connect to a larger strategy of simplifying that use permit process.

--with regard to pedestrian standards, today we have a requirement that all parking lots have walkway systems, but we do not have standards that clarify those requirements. Public Works and Building & Safety have provided some guidelines on what we mean by a walkway system into or out of a parking lot. The standards have to do with adequate width, making connections between sidewalks or bike trails on the perimeter, etc. These will not require any type of public review but will be part of the building permit process.

--more guidelines on situations where someone is asking for commercial zoning and they want to qualify for a "floor area bonus" that allows more square footage than the top of the range for a neighborhood business center or commercial community scale business center.

—on the process side, there is a recommendation for two changes relating to the process of approving design standards that should help streamline the process. One is to use “substantial” and allow for an administrator at Planning, Building & Safety or Public Works to make a determination that a proposed development “substantially” meets the design standard. We are asking the Commission to give a little bit of discretion that people who are on staff can use some common sense and identify when the spirit and intent is met.

—another process proposal is to allow staff to administratively approve waivers of design standards (not zoning or subdivision standards). Krout believes that a little more flexibility is permissible and suggested that the Public Works Director knows better whether or not to permit a sewer line to go in the opposite direction of the grade and surface or to be plus or minus 18 feet in depth. Lots of these are technical decisions and this is a request that the staff be trusted to make some decisions. These waivers would be subject to appeal to the Planning Commission and/or the City Council.

The staff did meet with the development community. Krout noted that there is a letter from the Realtors Association in opposition with concerns about cost and safety issues. Krout advised that he has responded and he will attempt to meet with the Realtors Association prior to the next meeting.

Strand expressed concern about the requirement that the landscaping be done by a qualified nurseryman or contractor. What if a neighborhood wants to take over a median and buy the stock? Why can't they do the planting as a donated service? Krout thought that provision had been removed from the proposal. He will ask the Parks Director to respond at the next meeting.

Esseks requested that the issue of whether these enhanced design standards really help promote new investment and the retention of existing businesses be addressed at the next meeting. He believes that they should, but it would be helpful to have some empirical evidence about that. He likes the comparisons to peer communities but maybe the APA service can help on this issue. Either the investors themselves or the consumers expect a certain type and standard of amenity. Krout advised that the staff did compare the standards, but it will be hard to compare the economic development in one community versus another based on the quality of the standards, but we can probably get to survey responses from employers who make relocation decisions.

With regard to the waiver process, Carlson inquired as to how one knows that they may be interested in appealing what has been waived. Krout stated that neighbors are not notified today when the Department approves an administrative amendment today, except in one particular case in the zoning ordinance that has to do with the new neighborhood design

standards. For most cases, it is not necessary and he would not suggest it. If you feel that something is needed, then the best approach would be to expand on what we already do with the City Council, where the Planning Department sends them a written summary of the resolutions of Planning Commission and the letter approving final plats. If the Planning Commission needs to be kept informed about administrative decisions, that would probably be the best way to do it. There was concern about the timeliness of such notice in order to meet a 14-day appeal period.

Strand moved to defer two weeks, with continued public hearing and action scheduled for December 21, 2005, seconded by Sunderman and carried 8-0: Carroll, Esseks, Larson, Sunderman, Strand, Taylor, Pearson and Carlson voting 'yes'; Krieser absent.

Support

1. Neal Thomas, current chair of the **Pedestrian and Bicycle Advisory Committee**, read a letter in support of enhancing pedestrians standards throughout our community. The Pedestrian and Bicycle Advisory Committee has reviewed the proposal which includes requirements for pedestrians circulating in facilities within commercial and industrial areas and the Committee believes these requirements are critical. The members of the Advisory Committee voted unanimously to support these pedestrian design standards, and suggests that continued discussion should occur regarding other areas of our community in need of detailed pedestrian design standards.

Esseks inquired about provisions for bicycle racks. Thomas does not believe that has been addressed in this proposal. He only recalled random discussion about it.

2. Mike Heyl, Public Health Educator with the **Lincoln-Lancaster County Health Dept.**, appeared on behalf of the Director of the Health Department, and expressed support for the design standards for pedestrians circulating in commercial and industrial areas. The Planning Commission has been meeting with the Lancaster County Board of Health in regard to physical activity and how the built environment impacts people's choice of transportation. The Health Department believes that the design standards make physical activity the easy choice. It would make Lincoln a more pedestrian-friendly community through the built environment. He also referred to the letter dated November 8, 2005, from Larry Hudkins on behalf of the Board of Health, expressing unanimous support for these standards as written.

Taylor asked whether non-motorized transportation has been addressed. Heyl indicated that it has not yet been addressed. The Multi-Modal Transportation Task Force did some community information gathering and he believes that report is part of the Comprehensive Plan.

Esseks commented that Lincoln is famous for its bike trails and hiking trails, and it would be a shame not to have some encouragement for the bike racks. Heyl noted that there is a coalition that has been working for about a year, called "Lincoln in Motion", which is taking a look at things that can be done to make that environment more friendly. As part of the Downtown Master Plan, some of the parking garages were approached about taking some of the parking stalls out and putting in bike lockers or bike stalls. That might be more on a seasonal basis. The bike trails are not yet considered a commuter trail system.

There was no testimony in opposition.

There being no further business, the meeting was adjourned at 3:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on December 21, 2005.